

EXHIBIT 50

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 MDL No. 1456

4 C.A. No. 01-CV-12257-PBS

5 * * * * *

6 IN RE: PHARMACEUTICAL INDUSTRY *

7 AVERAGE WHOLESALE PRICE LITIGATION *

8 _____ *

9 THIS DOCUMENT RELATES TO ALL ACTIONS *

10 * * * * *

11
12 DEPOSITION OF MELISSA D. SHANNON, a witness

13 called on behalf of Baxter International Inc. and

14 Baxter Healthcare Corporation, pursuant to the

15 Federal Rules of Civil Procedure, before Jessica L.

16 Williamson, Registered Merit Reporter, Certified

17 Realtime Reporter and Notary Public in and for the

18 Commonwealth of Massachusetts, at the Offices of

19 Hagens Berman Sobol Shapiro LLP, One Main Street,

20 Cambridge, Massachusetts, on Tuesday, May 23, 2006,

21 commencing at 9:35 a.m.

22

1 Action Complaint to Comply With Court's Class
2 Certification Order, marked for identification.)

3 Q. Deposition Exhibit Shannon 004 is a
4 document entitled "Notice of Errata to the Fourth
5 Amended Consolidated Class Action Complaint to
6 Comply With Court's Class Certification Order."
7 Do you see that document?

8 A. I do.

9 Q. Ms. Shannon, have you ever seen this
10 document before?

11 A. Yes.

12 Q. When did you first see this document?

13 A. Yesterday.

14 Q. Can I have you look at the last page of
15 the document, referring particularly to Health
16 Care For All, Paragraph 39a. Do you see that?

17 A. Uh-huh. Yes.

18 Q. The last sentence says, "During the
19 Class Period, HCFA's members have been billed for
20 and paid charges for AWPIDs outside of the
21 Medicare Part B context based on published AWP's."

22 Do you see that?

1 A. I do.

2 Q. What's your factual basis for making
3 that assertion?

4 A. I first noticed this sentence yesterday
5 afternoon, and I'm not sure how it got in there.
6 I don't think it accurately describes our
7 relationship with our members in this case.

8 Q. Do you have any data regarding whether
9 your members have purchased any drugs that are at
10 issue in the AWP complaint?

11 A. No.

12 Q. Do you have any information regarding
13 whether any of your members paid any charges for
14 the drugs identified in the AWP complaint?

15 A. No. We are a plaintiff for injunctive
16 relief only.

17 Q. Did you undertake any effort, that is,
18 Health Care For All, to contact any members, any
19 of your members to ask about their drug purchases
20 or drug payments?

21 A. No. The only outreach we did to members
22 on this question was last August/September in

1 Massachusetts to expand access to affordable,
2 quality health care since 1985."

3 Do you see that sentence?

4 A. Yes.

5 Q. Do you agree with the facts outlined in
6 that sense?

7 A. That sentence is accurate.

8 Q. Second sentence says, "HCFA maintains
9 its principal place of business in Boston,
10 Massachusetts."

11 Do you see that sentence?

12 A. Yes.

13 Q. And is that sentence accurate?

14 A. Yes.

15 Q. You previously testified that you
16 thought the third sentence of Paragraph 39a of
17 Deposition Exhibit Shannon 004 was not accurate,
18 correct?

19 A. Only in that we don't know whether our
20 members have been billed for and paid charges for
21 AWPIDs.

22 Q. And, to your knowledge, Health Care For

1 All did nothing to attempt to confirm that,
2 correct?

3 A. That's correct.

4 Q. Why is that?

5 A. I just became aware of this sentence
6 yesterday and because we're plaintiffs for
7 purposes of injunctive relief only, so we weren't
8 concerned with the drug use or payment history of
9 our members, and we don't ever ask those questions
10 in the routine course of advocacy with our
11 members.

12 Q. And you say your -- Health Care For All
13 is only interested in injunctive relief only; is
14 that correct?

15 A. In this case, we're a plaintiff in this
16 track of this lawsuit for injunctive purposes
17 only.

18 Q. So Health Care For All is not seeking
19 any damages in this case?

20 A. That's correct.

21 Q. Since coming to Health Care For All,
22 have you had an occasion to do any research

1 Q. Were you aware of that?

2 And when you used the word "track," were
3 you referring to Track 1 or Track 2 or --

4 A. Track 1, yes.

5 Q. You were referring to Track 1.

6 So by that --

7 A. Only because I wasn't making any
8 assumptions about our involvement in future
9 tracks.

10 Q. Okay. Let me go back and ask a few
11 questions just to make this a little cleaner.

12 I asked you earlier about the
13 allegations contained in Paragraph 39a of
14 Deposition Exhibit Shannon 004?

15 A. Yes.

16 Q. And the last sentence of which you said
17 was inaccurate?

18 A. Yes --

19 Q. Now --

20 A. -- to my knowledge. We don't have
21 knowledge about that. That may be an accurate
22 sentence, but we don't have knowledge enough to

1 say whether that was true or not.

2 Q. And you, to your knowledge, Health Care
3 For All has spoken to none of its members about
4 drug purchases or drug sales or drug
5 reimbursement?

6 A. That's correct, although we have -- some
7 of our members have agreed to be plaintiffs in
8 other lawsuits, and therefore I have talked to
9 some members about their use of prescription drugs
10 related to those other lawsuits.

11 Q. But none relating to the AWP litigation?

12 A. That's correct.

13 Q. Now, does your answer to this question
14 supply whether we're talking about Track 1
15 defendants and Track 1 drugs or Track 2 defendants
16 and Track 2 drugs?

17 A. I assume that it does, but I know -- you
18 know, I'm not a lawyer in a litigation context,
19 and there may be -- the situation may be very
20 different by the time we get to Track 2. I don't
21 know whether -- what's going to happen in Track 2
22 is all I meant to say. I wasn't meaning to say

1 that anything I've said wouldn't also apply to
2 Track 2, assuming that we're still a plaintiff in
3 the case at that time.

4 Q. But today your answers apply to both
5 Track 1 and Track 2?

6 A. Yes.

7 Q. You previously mentioned that there were
8 four individuals who were working with PAL?

9 A. Yes.

10 Q. Do you know who those -- or --

11 A. Three.

12 Q. Three individuals.

13 Who were the three individuals who
14 worked with PAL?

15 A. They have a director of the project,
16 Alex Sugarman-Brozan -- there's a hyphen between
17 Sugarman and Brozan -- and Renee Markus Hodin.
18 I'm not sure her exact job title. She's sort of
19 deputy director of that project. She's sort of
20 the liaison to community groups around the
21 country. And then they have what they call an
22 associate who supports them.

1 Q. And who's that?

2 A. Julie Bizzotto.

3 Q. Are those three individuals employed by
4 Health Care For All?

5 A. No. They're employed by Community
6 Catalyst.

7 Q. Do you know whether any of those three
8 individuals worked for any other entity as well as
9 Community Catalyst?

10 A. Currently?

11 Q. Yes, ma'am.

12 A. To my knowledge, they don't.

13 Q. And just to make sure, you don't know
14 which Track 1 or Track 2 drugs were purchased by
15 any of Health Care For All's members, correct?

16 A. That's correct.

17 Q. Nor do you know whether any members,
18 drug purchasers -- whether reimbursement had been
19 based on AWP at all, correct?

20 A. For our members, not at all.

21 Q. Nor do you know whether any of your
22 members actually paid for drugs at prices lower

1 Track 2?

2 A. That's correct.

3 Q. What remedy does Health Care For All
4 seek in this AWP litigation?

5 A. We're in the lawsuit for injunctive
6 relief only to hope that the practices would be
7 changed so that consumers can have more access to
8 prescription drugs at affordable prices.

9 Q. What specific injunctive relief do you
10 want?

11 A. We don't have a specific remedy in mind.

12 Q. For example, are you suggesting that
13 through your lawsuit, Congress should somehow
14 change Medicare reimbursement?

15 A. No, we're not suing Congress. No. We
16 do -- we don't have a specific remedy in mind.

17 (Exhibit Shannon 005, Document
18 headed "Consumer Groups Charge Industry-Wide Price
19 Manipulation - Over \$800 Million in Illegal
20 Profits from Medicare & Medicare Patients," marked
21 for identification.)

22 Q. Let me show you what's been marked as

1 contact and ask for your members' information
2 regarding drugs used or how they were -- whether -
3 - how any paid for their drugs or whether there
4 was any reimbursement, correct?

5 A. Unless they were a plaintiff in a
6 different lawsuit, no.

7 Q. But as to the AWP litigation, the
8 answer's no?

9 A. That's correct.

10 Q. No. 21 -- I'm sorry, No. 18, as to
11 information regarding the injury suffered by
12 Health Care For All, you've produced no documents
13 relating to that. How has Health Care For All
14 been injured as a result of the complaints in the
15 AWP litigation?

16 A. Health Care For All itself doesn't --
17 isn't claiming any damages and doesn't have any.
18 We are concerned --

19 Q. Doesn't have any injury?

20 A. Any injury.

21 Q. Okay.

22 A. As an organization we're concerned, as I

1 said initially, about healthcare access, and so we
2 are concerned that the practices alleged in this
3 lawsuit have contributed to making prescription
4 drugs less accessible to people, particularly
5 people of limited means who are our primary
6 constituency.

7 Q. No. 21 indicated we were going to ask
8 you questions about the decision to seek
9 injunctive relief, and we have asked those
10 questions. I believe you testified that you don't
11 know what remedy Health Care For All seeks; is
12 that correct?

13 A. Yeah, what type of injunctive relief?

14 Q. Yes.

15 A. That's correct.

16 Q. Okay. Why?

17 A. Because we are not expert in how this
18 issue should be resolved. We're interested in
19 seeing the practice changed in an equitable way.
20 I think that that could be done in any number of
21 forms.

22 Q. But you just don't know what they are?

1 A. That's correct.

2 MR. JACKSON: Subject to recall, based
3 upon additional documents that may be produced, I
4 don't have any further questions of Health Care
5 For All at this time. I will say -- add that I
6 think that I'll be sending you a letter asking for
7 other documents that were mentioned during our
8 deposition today that have not yet been produced
9 in other similar matters, but subject to that and
10 the ability to recall this witness, I have nothing
11 further today.

12 MR. NOTARGIACOMO: We'll respond to that
13 letter upon receipt. I have -- unless people on
14 the phone have questions, I just have a few
15 questions. Anybody on the phone have any
16 questions?

17 MS. WALKER: I don't.

18 MS. MACER: No.

19

20 CROSS EXAMINATION

21 BY MR. NOTARGIACOMO:

22 Q. And, Ms. Shannon, I have just a few

EXHIBIT 51

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EXHIBIT 52

[Filed Under Seal]

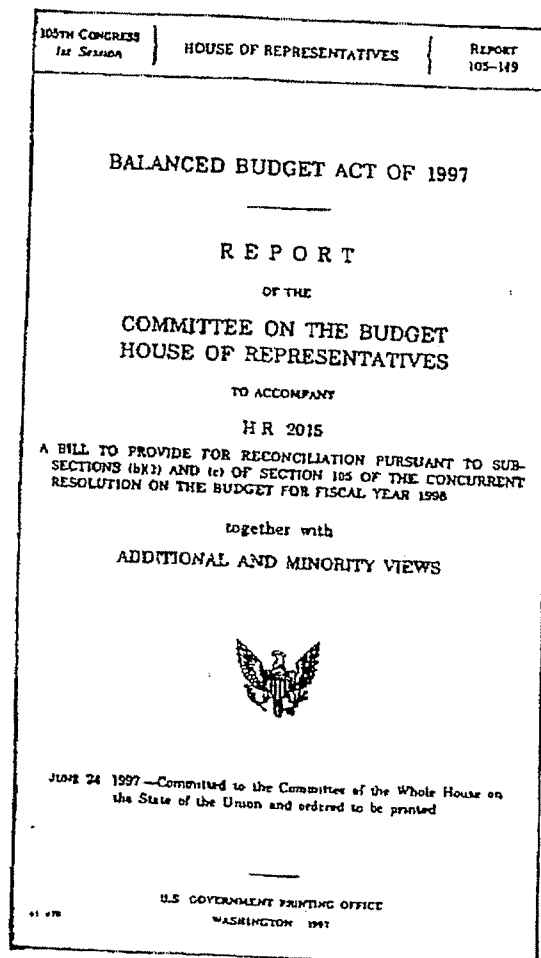
EXHIBIT 53

[Filed Under Seal]

EXHIBIT 54

[Filed Under Seal]

EXHIBIT 55



1354

provision is intended to promote efficiency, increase uniformity, and reduce administrative burdens in claims administration and billing procedures.

Effective Date The provision is effective upon enactment.

Section 10615 Updates for ambulatory surgical services

Current Law Medicare pays for ambulatory surgical center (ASC) services on the basis of prospectively determined rates. These rates are updated annually by the CPI-U. OBRA '93 eliminated updates for ASCs for FY1994 and FY1995.

Explanation of Provision The provision would set the updates for FY 1998 through FY2002 at the increase in the CPI-U minus 2.0 percentage points.

Reason for change This provision would contribute to slowing unsustainable growth in Part B expenditures.

Effective date This provision is effective for services delivered on or after October 1, 1997.

Section 10616 Reimbursement for drugs and biologicals

Current Law Payment for drugs is based on the lower of the estimated acquisition cost or the national average wholesale price. Payment may also be made as part of a reasonable cost or prospective payment.

Explanation of Provision The provision would specify that in any case where payment is not made on a cost or prospective payment basis, the payment shall be equal to 95 percent of the average wholesale price for the drug or biological involved.

Reason for Change The Inspector General for the Department of Health and Human Services has found evidence that over the past several years Medicare has paid significantly more for drugs and biologicals than physicians and pharmacists pay to acquire such pharmaceuticals. For example, the Office of Inspector General reports that Medicare reimbursement for the top 10 oncology drugs ranges from 20 percent to nearly 1000 percent per dosage more than acquisition costs. The Committee intends that the Secretary, in determining the average wholesale price, should take into consideration commercially available information including such information as may be published or reported in various commercial reporting services. The Committee will monitor AWP's to ensure that this provision does not simply result in a 5% increase in AWP's.

Effective Date The provision is effective January 1, 1998.

Section 10617 Coverage of oral anti-nausea drugs under chemotherapeutic regimen

Current Law Medicare provides coverage for certain oral cancer drugs. The Administration has specified that Medicare will pay for anti-emetic drugs when they are needed for the administration and absorption of primary Medicare covered oral anticancer chemotherapeutic agents when a high likelihood of vomiting exists.

Explanation of Provision The provision would provide coverage, under specified conditions, for a self-administered oral drug used as an acute anti-emetic used as part of an anticancer chemotherapeutic regimen. It would have to be administered by or under the supervision of a physician for use immediately before,